

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 534

Introduced by Assembly Member Vargas
(Principal coauthor: Assembly Member Correa)
(Coauthors: Assembly Members Chavez, Frommer, Hancock,
Laird, Lieber, Maze, and Nunez)

February 18, 2003

An act to amend Sections 22442, 22442.2, and 22443 of, and to add ~~Sections 22441.5 and~~ *Section 22442.1* to, the Business and Professions Code, relating to immigration consultants.

LEGISLATIVE COUNSEL'S DIGEST

AB 534, as amended, Vargas. Immigration consultants: client protection.

Existing law regulates the practice of immigration consultants, defined as persons who provide nonlegal assistance or advice in an immigration matter. Existing law makes a violation of the provisions governing immigration consultants a crime.

Existing law requires an immigration consultant to meet certain requirements, including (1) requiring a consultant to conspicuously display a notice stating, among other things, that he or she is not an attorney, (2) requiring a consultant to provide a client with a written contract, *the provisions of which must be stated in English and the language of the client*, containing ~~provisions including information that includes~~ the services to be provided and the amount charged, and (3) prohibiting a consultant from retaining original documents of a client.

~~This bill would prohibit a person engaging in the business of, or acting in the capacity of, an immigration consultant from accepting any payment or providing any services until he or she has registered with the Department of Consumer Services as an immigration consultant and obtained a general business license. The bill would require the an immigration consultant to provide to the a client a written translation of the contract into in the client's native language, and would require the contract to state that if this is not done, the contract is void. The bill would also require the contract to list the documents to be prepared by the consultant and explain their purposes. The bill would require a consultant to provide a signed receipt meeting specified requirements for all payments made by the client and to provide a written translation of the receipt in the client's native language.~~

~~This bill would require the notice posted in the consultant's office to include the services that the immigration consultant provides and would require the consultant, if he or she has prepared legal forms or documents on behalf of the client and the client is not fluent in English, to provide a competent translator and to provide a translated copy of the documents signed and the fee for each service. The bill would also require a consultant to return to a client all original documents that the client has provided in support of his or her application.~~

Because this bill would create new requirements for an immigration consultant, the violation of which would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 22441.5 is added to the Business and~~
- 2 ~~Professions Code, to read:~~
- 3 ~~22441.5. A person engaging in the business of or acting in the~~
- 4 ~~capacity of an immigration consultant shall not accept any~~

1 ~~payment or provide any services as an immigration consultant~~
2 ~~until he or she has done each of the following:~~

3 ~~(a) Registered with the Department of Consumer Services as an~~
4 ~~immigration consultant.~~

5 ~~(b) Obtained a general business license.~~

6 ~~SEC. 2. Section 22442 of the Business and Professions Code~~

7 *SECTION 1. Section 22442 of the Business and Professions*
8 *Code is amended to read:*

9 22442. (a) Every person engaged in the business or acting in
10 the capacity of an immigration consultant who enters into a
11 contract or agreement with a client to provide services shall, prior
12 to providing any services, provide the client with a written
13 contract, the contents of which shall be prescribed by the
14 Department of Consumer Affairs in regulations ~~adopted by it.~~

15 (b) The written contract shall include all provisions relating to
16 the following:

17 (1) The services to be performed.

18 (2) The costs of the services to be performed.

19 ~~There~~

20 (3) *There* shall be printed on the face of the contract in 10-point
21 bold type a statement that the immigration consultant is not an
22 attorney and may not perform the legal services that an attorney
23 performs.

24 ~~(3)~~

25 (4) The *written* contract shall state that if a written translation
26 of the contract into the client's native language is not provided to
27 the client, the contract is void.

28 (5) *The written contract shall list the documents to be prepared*
29 *by the immigration consultant, and shall explain the purpose and*
30 *process of each document.*

31 (6) *The written contract shall state the purpose of each*
32 *document to be prepared by the consultant, the actions to be taken*
33 *by the consultant regarding each document, including the agency*
34 *and office that with which each document will be filed, the*
35 *standards and criteria by which the agency will evaluate each*
36 *document, and the actions required by the agency to achieve the*
37 *purpose for which each document is filed.*

38 (c) The written contract shall not include provisions relating to
39 the following:

1 (1) Any guarantee or promise, unless the immigration
2 consultant has some basis in fact for making the guarantee or
3 promise.

4 (2) Any statement that the immigration consultant can or will
5 obtain special favors from or has special influence with the United
6 States Immigration and Naturalization Service.

7 ~~(d) The provisions of the written contract shall be stated both~~
8 ~~in English and in the language of the client.~~

9 *(d) The consultant shall provide the client a written translation*
10 *of the contract in the client's native language.*

11 (e) The client shall have the right to rescind the contract within
12 72 hours of signing the contract. The contents of this subdivision
13 shall be conspicuously set forth in the written contract in both
14 English and the ~~language of the client~~ *client's native language*.

15 ~~(f) The consultant shall provide the client a written translation~~
16 ~~of the contract in the client's native language.~~

17 ~~(g)~~

18 *(f) A violation of this section is a misdemeanor.*

19 ~~(h)~~

20 (g) This section does not apply to employees of nonprofit,
21 tax-exempt corporations who help clients, free of charge or for a
22 fee, including reasonable costs, consistent with that authorized by
23 the United States Immigration and Naturalization Service for
24 qualified designated entities, complete application forms in an
25 immigration matter.

26 ~~SEC. 3.~~

27 *SEC. 2.* Section 22442.1 is added to the Business and
28 Professions Code, to read:

29 22442.1. A person engaged in the business or acting in the
30 capacity of an immigration consultant shall ~~do all of the following:~~

31 ~~(a) Provide~~ *provide* a signed receipt to a client for all payments
32 made by that client. *The receipt shall be typed or computer*
33 *generated on the consultant's letterhead and shall display the*
34 *individual charges and total charges for services and the client's*
35 *payments offsetting those charges. The consultant shall provide*
36 *the client a written translation of the receipt in the client's native*
37 *language.*

38 ~~(b) If the consultant has prepared legal forms or documents on~~
39 ~~behalf of a client not fluent in the English language, the consultant~~
40 ~~shall provide a competent translator to translate the information~~

1 ~~contained in the legal forms or documents, and shall provide the~~
2 ~~client with a translated copy of the documents signed.~~

3 ~~SEC. 4.~~

4 *SEC. 3.* Section 22442.2 of the Business and Professions
5 Code is amended to read:

6 22442.2. (a) An immigration consultant shall conspicuously
7 display in his or her office a notice that shall be at least 12 inches
8 by 20 inches with boldface type or print with each character at least
9 one inch in height and width in English and in the native language
10 of the consultant's clientele, *that contains* the following
11 information:

12 (1) The full name, address, and evidence of compliance with
13 any applicable bonding requirement including the bond number,
14 if any.

15 (2) A statement that the consultant is not an attorney.

16 (3) The services that the immigration consultant provides *and*
17 *the current and total fee for each service.*

18 (b) Prior to providing any services, an immigration consultant
19 shall provide the client with a written disclosure that shall include
20 the immigration consultant's name, address, telephone number,
21 agent for service of process, and evidence of compliance with any
22 applicable bonding requirement, including the bond number, if
23 any.

24 (c) (1) Except as provided in paragraph (2) or (3), an
25 immigration consultant who prints, displays, publishes,
26 distributes, or broadcasts, or who causes to be printed, displayed,
27 published, distributed, or broadcasted, any advertisement for
28 services as an immigration consultant, within the meaning of
29 Section 22441, shall include in that advertisement a clear and
30 conspicuous statement that the immigration consultant is not an
31 attorney.

32 (2) Notwithstanding paragraph (1), a person engaging in the
33 business or acting in the capacity of an immigration consultant
34 who is not licensed as an attorney in any state or territory of the
35 United States, but is authorized by federal law to represent persons
36 before the Board of Immigration Appeals or the United States
37 Immigration and Naturalization Service, shall include in any
38 advertisement for services as an immigration consultant a clear
39 and conspicuous statement that the consultant is not an attorney but
40 is authorized by federal law to represent persons before the Board

1 of Immigration Appeals or the United States Immigration and
2 Naturalization Service.

3 (3) Notwithstanding paragraph (1), a person engaging in the
4 business or acting in the capacity of an immigration consultant
5 who is not an active member of the State Bar of California, but is
6 an attorney licensed in another state or territory of the United
7 States and is admitted to practice before the Board of Immigration
8 Appeals or the United States Immigration and Naturalization
9 Service, shall include in any advertisement for services as an
10 immigration consultant a clear and conspicuous statement that the
11 consultant is not an attorney licensed to practice law in California
12 but is an attorney licensed in another state or territory of the United
13 States and is authorized by federal law to represent persons before
14 the Board of Immigration Appeals or the United States
15 Immigration and Naturalization Service.

16 (4) If an advertisement subject to this subdivision is in a
17 language other than English, the statement required by this
18 subdivision shall be in the same language as the advertisement.

19 SEC. 5. Section 22443 of the Business and Professions Code
20 is amended to read:

21 22443. (a) A person engaged in the business or acting in the
22 capacity of an immigration consultant shall deliver to a client a
23 copy of each document or form completed on behalf of the client.
24 Each document and form delivered must include the name and
25 address of the immigration consultant.

26 (b) A person engaged in the business or acting in the capacity
27 of an immigration consultant shall retain copies of all documents
28 and forms of a client for not less than three years from the date of
29 the last service to the client.

30 (c) A person engaged in the business or acting in the capacity
31 of an immigration consultant shall return to a client all original
32 documents, *including, but not limited to, original birth*
33 *certificates, rental agreements, utility bills, employment stubs,*
34 *Department of Motor Vehicle licenses with dates of entry, and*
35 *passports*, that the client has provided to the consultant in support
36 of the client's application.

37 SEC. 6. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or



1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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